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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/926,694      | 02/28/2002  | Andreas Ulli         | 5085                | 3017             |

7590 12/04/2002

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EXAMINER

ZIRKER, DANIEL R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 12/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 11/8/02.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1-12 is/are pending in the application.

Of the above claim(s) 1-7, 11, 12 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 8-10 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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1. Applicant's election with traverse of claims 8-10 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the product can be made only by the process as claimed, and also that the process as claimed cannot be used to make other products, thereby satisfying the test of MPEP § 806.05(f). This is not found persuasive because method claim 7 also contains the additional step of laminating on both surfaces of the "foil", which would enable the process to make a wide variety of other products and thereby not satisfy the aforementioned MPEP test referred to above.

The requirement is still deemed proper and is therefore made FINAL.

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner suggests that "foil" be deleted throughout the claims in favor of

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more conventional fabric art terminology, and also that "points" be deleted in favor of --adhesive dots--, which is believed to be the more conventional nomenclature.

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over applicant's admission in the specification at page 2, second complete paragraph taken in view of either Groshens -579 or -800, or Japanese Patent Abstract 58 040172. Applicant appears to admit that the structure of a suitable "substrate" that is coated on one surface with a desired pattern of adhesive dots and then laminated to "another foil" to form the suitable "breathing active textiles for clothing", i.e., an air permeable water impermeable fabric, is well known, the only missing element being an at least partially aligning coating of a suitable adhesive composition on the "substrate's" opposing outer surface. Each of the secondary references, however discloses (note particularly Groshens -579, the Abstract, Figure

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layers are each believed to be well known elements to one of ordinary skill in the art, in the absence of unexpected results.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (703) 308-0031. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Dzirker:cdc

November 27, 2002

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1300  
1700

*Daniel Zirker*